

December 12, 2019

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Via FOIA Online

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Re: Freedom of Information Act Request regarding the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation's treatment in a manner similar to a state approved by Region 5; water quality standards approved by Region 5; and National Pollutant Discharge Elimination System permits issued by Region 5

Dear FOIA Officer:

This FOIA request is submitted on behalf of Enbridge Energy, L.P. ("Enbridge") to the Environmental Protection Agency pursuant to the Freedom of Information Act, 5 U.S.C. §552 ("FOIA"), and regulations of the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. For purposes of this request, Enbridge is a "commercial use" requester as that term is defined at 40 C.F.R. §2.107(b)(1). Enbridge is willing to pay search, review, photocopying, and other fees related to responding to this FOIA request up to \$1,500. We request that you contact us first before incurring any charges in excess of that amount.

II. Defined Terms

Please note that, wherever used in this request (including within any of the definitions of terms listed below), the term—

"Document" means documents of any and all kinds and formats (whether in hard copy, electronic, or other format or form of storage, whether on a hard drive, shared drive, or other device), including but not limited to applications, reports (including Discharge Monitoring Reports), affidavits, exhibits, diagrams, drawings, materials, notices, notes, logs, calendar entries, applications, correspondence, memoranda, written communications, text messages, or emails; and when a specific Document is described, the term "Document" includes any and all attachments, exhibits, or appendices to the Document;

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“**Person**” means any natural person as well as any general or limited partnership, joint venture, organization, association, corporation, or any other legal entity organized under federal, state, or tribal law;

“**Bad River Band**” means the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, a federally-recognized Indian tribe; any agency, instrumentality, or utility of the Bad River Band; and any official, officer, employee, agent or attorney of that tribe and/or of any agency, instrumentality, or utility of that tribe;

“**CWA**” means the Clean Water Act, 33 U.S.C. §§ 1251 et. seq.;

“**EPA**” means the Environmental Protection Agency, including but not limited to Region 5, in which Region the Bad River Band’s reservation is located;

“**NPDES**” means the National Pollutant Discharge Elimination System under § 402 of the CWA (33 U.S.C. § 1342);

“**Region 5**” means Region 5 of the EPA;

“**TAS**” means treatment in a manner similar to a state pursuant to § 518 of the CWA (33 U.S.C. § 1377);

“**Water Quality Standards**” means those standards promulgated pursuant to § 303 (33 U.S.C. § 1313) of the CWA by the Bad River Band under its TAS authority.

Additionally, please note that, unless context clearly indicates otherwise, any word (including a Defined Term) used in the singular in this request includes the plural and the plural includes the singular.

III. Requested Documents

Please provide copies of the following-described Documents:

TAS Authority

1. Any application or other Document submitted by the Bad River Band to EPA requesting TAS for any program, activity, or purpose authorized by the CWA, including any amended or supplemented application.

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2. Any writings, emails, correspondence, materials, or other Documents submitted by the Bad River Band to EPA as part of, or together with, any application for TAS described in paragraph 1) as exhibits, appendices, attachments, or enclosures, including any cover letter or email transmittal memorandum or similar document.
3. Any Documents shared or exchanged by or between the Bad River Band and EPA prior to, and in anticipation of, the Bad River Band submitting a final application for TAS, including but not limited to, early drafts or components of the application for TAS, related correspondence by the Bad River Band and/or EPA, and related comments by EPA to the Bad River Band regarding any draft or component.
4. Any correspondence, email, letter, memoranda, or other Documents from EPA to the Bad River Band regarding any approval or denial of any TAS application, in whole or in part, including any documents explaining the basis of EPA's decision and/or any documents imposing any limitations or conditions on any such approval or denial.

Water Quality Standard Approval

1. Any Documents submitted by the Bad River Band to EPA requesting approval of proposed water quality standards, including any amended or supplemented submission.
2. Any writings, materials, or other Documents submitted by the Bad River Band to EPA as part of, or together with, any request for approval of proposed water quality standards as exhibits, appendices, attachments, or enclosures, including any cover letter or email transmittal memorandum or similar document.
3. Any Documents shared or exchanged by or between the Bad River Band and EPA prior to, and in anticipation of, the Bad River Band submitting a request for approval of water quality standards, including but not limited to, early drafts or components of the request for approval of proposed water quality standards, related correspondence by the Bad River Band and/or EPA, and related comments by EPA to the Bad River Band regarding any draft or component.
4. Any Documents, correspondence, email, letter, memoranda, or other Documents from EPA to the Bad River Band regarding any approval or denial of any Water Quality Standards, in whole or in part, including any documents explaining the basis of EPA's decision and/or any documents imposing any limitations or conditions on any such approval or denial.

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NPDES Permitting, Compliance and Enforcement

1. Any application or other Document submitted by the Bad River Band to EPA for a NPDES permit, including any amended or supplemented application and including any historical NPDES permit applications.
2. Any writings, materials, or other Documents submitted by the Bad River Band to EPA as part of, or together with, any application for a NPDES permit as exhibits, appendices, attachments, or enclosures, including any cover letter or email transmittal memorandum or similar document.
3. Any Documents shared or exchanged by or between the Bad River Band and EPA prior to, and in anticipation of, the Bad River Band applying for a NPDES permit including but not limited to, early drafts or components of the NPDES permit application, related correspondence by the Bad River Band and/or EPA, and related comments by EPA to the Bad River Band regarding any draft or component.
4. Any writings, materials, or other Documents shared or exchanged by or between the Bad River Band granting, relating to, or discussing any variance from applicable water quality standards with respect to any effluent or contaminant.
5. Any correspondence, email, letter, memoranda, or other Documents from EPA to the Bad River Band regarding any approval or denial of any NPDES permit, in whole or in part, including any documents explaining the basis of EPA's decision and/or any documents imposing any limitations or conditions on any such approval or denial.
6. Any current and historical NPDES permits issued by EPA to the Bad River Band, including any associated fact sheets and/or statements of basis.
7. Any facility inspection report, compliance reports and/or monitoring data Documents related to any NPDES permit issued to the Bad River Band, including but not limited to wastewater discharge monitoring report forms, monthly operation report forms, operation and management plan reports, pollutant minimization program for mercury status reports, mercury operational evaluation report, feasible alternative analysis and status reports, and phosphorous operation evaluation reports.
8. Any Documents related to any compliance or enforcement action, including but not limited to any August 2013 Compliance order and/or any Final Administrative Order for Compliance, Case No. 05-2019-0350 (Aug. 28, 2019), and/or any correspondence, report,

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reply, or other Document submitted by the Bad River Band relating to any EPA compliance or enforcement action (including but not limited to Case No. 05-2019-0350).

9. All correspondence or other Documents by or between EPA and any facilities operating under NPDES permits issued by EPA to the Bad River Band, including but not limited to general correspondence; correspondence regarding potential, pending, and closed enforcement matters; correspondence regarding any monitoring data and/or compliance reports.
10. All public notices, public hearing records, and/or public comments regarding any NPDES permit application, NPDES permit, and/or EPA enforcement action involving the Bad River Band.

If any requested documents, or any portion thereof, are determined to be exempt from release pursuant 5 U.S.C. § 552(b) and 40 C.F.R. § 2.105, please release any non-exempted portions and please describe the basis for exemption and identify the documents or portions of documents determined to be exempt.

We respectfully request that EPA respond to this request within 20 business days of the date of this letter pursuant to 40 C.F.R. § 2.104.

Please send all copies of requested documents produced in response to this request to:

Justin B. Nemeroff
VENABLE LLP
600 Massachusetts Avenue NW
Washington, D.C. 20001
T: 202.344.4215
JBNemeroff@venable.com

Thank you, and please do not hesitate to contact me with questions regarding this request.

Sincerely,

/s/ Justin B. Nemeroff